

No. 15826

United States
Court of Appeals
for the Ninth Circuit

CECIL M. JACKSON, Bankrupt,
Appellant,

vs.

A. S. MENICK, Trustee in Bankruptcy of Cecil M.
Jackson, Bankrupt,
Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division.

FILED

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PAUL P. HENNING, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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BANKRUPTCY PETITION

(Schedule B-5—Page 15)

**Property Claimed as Exempt from the Operation
of the Act of Congress Relating to Bankruptcy**

(N. B.—Each item of property must be stated, with its valuation, and, if any portion of it is real estate, its location, description and present use.)

Valuation

Homestead of petitioner and wife in joint tenancy at 306 Avondale Ave., County of Los Angeles, Los Angeles, California, described as: "Lot 2, Block 8 of Brentwood Park, City of Los Angeles. Also that portion of Avondale Avenue and Hanover Street vacated by Ordinance 41346 new series of said City, adjoining said Lot 2 on the Northwest, bounded on the North by the Southerly line of said Hanover Street, as now established, 75 feet wide and on the West by the Easterly line of said Avondale Avenue, as now established, 75 feet wide as per map recorded in Book 9, Pages 10 and 11 of Maps in the office of the Recorder of said County." Under Calif. Civil Code §1237-1260.....

\$3,525.96

Earnings of petitioner within last 30 days, under Calif. C.C.P. §690.11.....	30.00
Household goods and furniture, household stores, wearing apparel, etc., under Calif. C.C.P. §690.2.....	2,000.00
Pictures painted by petitioner's son and personal books of petitioner, under Calif. C.C.P. §690.1.....	120.00
\$1,000 life insurance policy with Prudential Ins. Co., with wife as beneficiary. Premiums \$25 yearly, no cash surrender value, under Calif. C.C.P. §690.19.	
2 \$10,000 life insurance policies with Occidental Life Ins. Co., on life of petitioner with wife as beneficiary. Premiums of \$50 and \$62 monthly = \$120. Petitioner has borrowed \$2,000, no cash surrender value—to the extent as allowed by law.	
Total	\$5,675.96

/s/ CECIL M. JACKSON,

Signature of Petitioner. [2*]

In the United States District Court for the Southern
District of California, Central Division

In Bankruptcy No. 73351—TC

In the Matter of :

CECIL M. JACKSON.

TRUSTEE'S REPORT OF
EXEMPT PROPERTY

To David B. Head, Referee in Bankruptcy :

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid as his own property, under the provisions of the Act of Congress relating to bankruptcy, as his exemptions allowed by law and claimed by him in his schedules filed in the above-entitled proceeding.

Property claimed to be exempt by the laws of the United States, with reference to the statute creating the exemption :

Property claimed to be exempt by State laws, with reference to the statute creating the exemption :

None

Estimated Value

C. C. P. 690.2—Household goods and furniture household stores, wearing apparel	\$2,000.00
C. C. P. 690.1—Pictures and books	120.00
C. C. P. 690.19—\$1,000 life insurance policy with Prudential Ins. Co.	

Trustee refuses to exempt the real property described as Lot 2, Block 8 of Brentwood Park, City of Los Angeles, and that portion of Avondale Avenue and Hanover Street vacated by Ordinance 41346 New Series, adjoining said Lot 2, on the ground that the Declaration of Homestead is improper in that the same does not contain a description of the property.

Trustee refuses to exempt two \$10,000 insurance policies with Occidental Life Insurance Company, on the ground that bankrupt's schedules do not clearly show the annual premium on said policies of insurance.

Dated this 22d day of August, 1956.

/s/ A. S. MENICK,
Trustee.

[Endorsed]: Filed Aug. 23, 1956. [3]

[Title of District Court and Cause.]

**BANKRUPT'S OBJECTIONS TO TRUSTEE'S
DETERMINATION OF EXEMPT PROPERTY**

To the Honorable David B. Head, Referee in
Bankruptcy:

Cecil M. Jackson, the above-named bankrupt, objects to the determination by the Trustee of property designated and set forth by him as exempt in the Trustee's report of exempt property, dated August 22, 1956, in the following particulars:

1. The Trustee has refused to set aside as exempt two \$10,000.00 insurance policies with the Occidental Life Insurance Company, as to which policies there is no known cash surrender value at the present time. The schedules have set forth that the premiums on these two policies are \$50.00 per month and \$62.00 per month, respectively, or a total of \$600.00 and \$744.00 annually, respectively.

2. That said policies inure to the benefit of the bankrupt's spouse within the meaning of §690.19 of the Code of Civil Procedure of the State of California.

3. That under and by virtue of the terms of §690.19 of the Code of Civil Procedure of the State of California, both of said policies are exempt to the proportion that \$1,000.00 bears to [4] the total annual premiums thereon.

4. The Trustee has refused to set aside as exempt the real property owned by the bankrupt and his wife in joint tenancy, at 306 Avondale Avenue, Los Angeles, California, on the ground that the Declaration of Homestead thereon is improper in that the same does not contain a description of the real property.

5. That the subsisting Declaration of Homestead of the bankrupt does contain a sufficient reference to, and description of, the property claimed as exempt so that the same may be identified within the meaning of the requirements of the exemption statutes of the State of California.

Wherefore, your petitioner prays that this Court determine that your petitioner is entitled to the exemption of the two \$10,000.00 insurance policies with Occidental Life Insurance Company to the full extent provided by the exemption laws of the State of California, and that your petitioner is entitled to have set aside as exempt the real property located at 306 Avondale Avenue, Los Angeles, California, as a homestead of the bankrupt, and his wife, and that the Trustee be ordered and required to designate the said insurance policies and the said real property, and set the same aside for your petitioner as exempt, and that your petitioner have such other and further relief as is just.

/s/ CECIL M. JACKSON,
Bankrupt.

/s/ IRVING SULMEYER,
Attorney for Bankrupt.

This may be filed late—verbal extension of time was granted.

/s/ DAVID B. HEAD,
Referee.

Duly verified.

[Endorsed]: Filed Sept. 6, 1956. [5]

[Title of District Court and Cause.]

POINTS AND AUTHORITIES IN SUPPORT
OF BANKRUPT'S OBJECTIONS TO TRUS-
TEE'S DETERMINATION OF EXEMPT
PROPERTY

To the Honorable David B. Head, Referee in Bank-
ruptcy:

Facts

Bankrupt recorded on May 21, 1954, a document entitled "Declaration of Homestead." Hereafter this Declaration of Homestead will be referred to as the document for purposes of brevity.

The document recorded by the bankrupt was completely filled out in all respects except paragraph three of said document did not contain the description of the property sought to be homesteaded. It is the understanding of the bankrupt that the exemption provided by the homestead statutes of the State of California has been disallowed by reason of the absence of the description of the bankrupt's property in said document.

In determining whether the document by reason of which the bankrupt claims the homestead exemption allowed by the laws of the State of California, is legally sufficient and therefore the refusal to allow the exemption was improper, we must examine [7] various aspects of those laws and the decisions passing on the points herein involved.

It is the contention of the bankrupt that the docu-

ment by reason of which he claims the homestead exemption was legally adequate. His contention is based on the following reasons:

1. The purpose and nature of the homestead legislation requires that a court reviewing or passing on the legal sufficiency of a homestead should give liberal construction to their interpretation that their purposes may be carried out to the benefit of the party or parties claiming the homestead.

2. The entire document here under consideration must be examined to determine its legal sufficiency.

3. The reference in the document here under consideration to the abandonment of homestead recorded on a specific date is a reference sufficiently certain to identify a document containing a full description of the property, and thus cure any defect in the document.

4. Parol evidence should be admitted to supply the insufficient description.

I.

The Purpose and Nature of the Homestead Legislation Requires That a Court Reviewing or Passing on the Legal Sufficiency of a Homestead Should Give Liberal Construction to Their Interpretation That Their Purposes May Be Carried Out to the Benefit of the Party or Parties Claiming the Homestead.

Homestead laws are predicated on public policy, their purpose being to promote a healthy social order

and to prevent insolvent persons from becoming homeless.

Schmidt vs. Denning,
117 Cal. App. 36;

Phelps vs. Loop,
64 Cal. App. (2d) 332;

Rich vs. Ervin,
86 Cal. App. (2d) 386. [8]

The homestead laws are intended for the benefit of the debtor rather than the creditor.

Simonon v. Burr,
121 Cal. 582.

The homestead laws are given a liberal construction in order to advance their beneficial objects and carry out the manifest purpose of the Legislature.

Greenlee v. Greenlee,
7 Cal. (2d) 579;

Johnson v. Brauner,
131 Cal. App. (2d) 713;

Oktanski v. Burn,
138 Cal. App. (2d) 419.

II.

The Entire Document Here Under Consideration
Must Be Examined to Determine Its Legal Sufficiency

The document here considered contains a statement that Cecil M. Jackson, his wife and two chil-

dren are residing on the land and premises located in the City of Los Angeles, County of Los Angeles, State of California, which they claim as a homestead, and further the value of this property sought to be homesteaded is set forth as being Twenty-seven Thousand Dollars. This document then contains a reference to "the" former declaration of homestead abandoned on or about March 12, 1954. An additional paragraph furnishes the information that the homestead property contains a six room residence and garage.

In determining the legal sufficiency of this document we must examine it in its entirety to determine it if refers anywhere to another document which will furnish additional information to complete the legal description.

Ritchie vs. Anchor Casualty Co.

135 Cal. App. (2d) 245, 251.

Paragraph six does refer to an abandonment of homestead carried out on a specific date. It is submitted that if the abandonment of homestead of March 12, 1954, contains an adequate description the document here considered is legally sufficient. [9]

III.

The Reference in the Document Here Under Consideration to the Abandonment of Homestead Recorded on a Specific Date Is a Reference Sufficiently Certain to Identify a Document Containing a Full Description of the Property, and Thus Cure Any Defect in the Document.

The question as to whether a reference to another document is adequate to supply an otherwise insufficient description has been considered many times by California courts.

The description in a declaration of homestead need not be more particular than in a conveyance.

Ornbaum vs. Creditors,
61 Cal. 455;

Jones vs. Gunn,
149 Cal. 689.

In the case of *Matter of the Estate of Caroline Ogburn*, 105 Cal. 95, the description of the property sought to be homesteaded was as follows:

“Western part of lot No. 5 of said village as laid out by F. S. Freeman’s Division of said village, the same being 37 feet front on Main Street of said village, and extending back with parallel lines one hundred and ninety feet deep, it being a part of the southeast $\frac{1}{4}$ of section 21, in Township No. 10 of range 2 east.”

It was contended by the appellants that this description was void as there was nothing to show the location of lot 5. The court held that the declaration of homestead stated that the family resided upon the lot sought to be homesteaded, and this statement, together with such description which followed clearly enough designated the premises intended to be claimed as a homestead.

The above case is cited with approval in the case of *Donnelly vs. Tregaskis*, 154 Cal. 261, at page 263, where the court stated:

“In this discussion we do not mean to be understood [10] as holding that to make a sufficient description a deed must refer to a map actually of record. We do mean, however, to declare the unquestioned rule that where a description is dependent for its sufficiency upon some instrument, such as a map, the map, property identified must be produced, or in some manner established, or the description must fail.”

A reference to a document previously recorded containing the description of property is adequate to furnish the legal description if there is such a document on record.

Marcone vs. Dowell,
178 Cal. 396.

An examination of the Los Angeles County Recorder's office for March 12, 1954, will reveal that an abandonment of homestead was recorded by Cecil M. Jackson and Edith Jackson. Said Abandonment of Homestead has a full description of the property formerly homesteaded. The Abandonment of Homestead refers to an earlier Declaration of Homestead recorded Jan. 22, 1951, in Book 35373, Page 293 of the Official Records of the County Recorder of Los Angeles County, California. An examination of the earlier Declaration of Homestead recorded on January 22, 1951, reveals the

property homesteaded at that time was valued at \$27,000, was the residence of Cecil M. Jackson and Edith E. Jackson and was a six-room residence.

It may be argued that the reference to the abandonment of homestead refers to another tract or piece of land. However, this argument was considered in the case of *Joyce vs. Tomasini*, 168 Cal. 234, where a contract to execute a lease for certain land only described the land by giving the names of individuals who lived on each side of it. The court allowed extrinsic evidence to be admitted to establish the exact description of the land. In response to the argument that there might be another tract of land of the same acreage, either in the county where the land was [11] alleged to be located or elsewhere, that was bounded by other lands belonging to the same persons as named, the court held that if such a coincidence existed it was incumbent upon the defendant to plead and prove it. The court held further that in the absence of such proof it will be presumed, upon the other facts shown, that these boundaries do identify the tract.

The foregoing indicates that the reference to the abandonment of homestead on March 12, 1954, is a reference to a document of record that can be definitely ascertained, that the document referred to contains an adequate legal description to ascertain the property sought to be homesteaded by the bankrupt herein.

IV.

Parol Evidence Should Be Admitted to
Supply the Insufficient Description

As pointed out above in determining the adequacy of the description in a homestead declaration the same rule should be applied as in conveyances.

Ornbaum vs. Creditors,
61 Cal. 455.

Where the terms used in a deed to show the description are equivocal, ambiguous or insufficient the subsequent acts of the parties while in interest may be resorted to for the purpose of ascertaining their intention.

Truett vs. Adams,
66 Cal. 218.

The subsequent residence by Mr. and Mrs. Jackson on the same property sought to be homesteaded is such acts as come within the purview of the case last cited above wherein parol evidence should be admitted to cure the insufficient description.

It is respectfully submitted that for the foregoing reasons the homestead exemption should be allowed.

IRVING SULMEYER and
EUGENE S. IVES,

By /s/ EUGENE S. IVES,
Attorneys for Bankrupt.

[Endorsed]: Filed Oct. 2, 1956. [12]

[Title of District Court and Cause.]

MEMORANDUM BY REFEREE RE OBJEC-
TIONS TO TRUSTEE'S REPORT OF EX-
EMPT PROPERTY

In his schedules the bankrupt claimed exemption of a homestead on a certain parcel of real property. The trustee refused to set aside the property as exempt and the bankrupt filed objections to the trustee's report of exempt property. The trustee contends that the homestead is void and of no effect for the reason that no description of the property claimed as a homestead is found in the declaration. This is the only issue involved.

The facts are not disputed. The bankrupt was living with his family on the property claimed as exempt on May 21, 1954, the date of the recording of a Declaration of Homestead by the bankrupt and his wife. The homestead declaration (Exhibit 1) states as follows:

“* * *

“(3) They are now residing on the land and premises located in the City [13] of Los Angeles, County of Los Angeles, State of California, and more particularly described as follows:

“(No description of the premises is set out.)

“* * *

“(6) No former declaration of homestead has been made by them, or by either of them, except as follows:

“The former declaration of homestead was abandoned on or about March 12, 1954.

“(7) The character of said property so sought to be homesteaded, and the improvement or improvements which have been affixed thereto, are as follows: six-room residence and garage.

“* * *”

It appears that on March 12, 1954, the bankrupt and his wife filed an Abandonment of Homestead (Exhibit 2) which described the property upon which homestead was abandoned as follows:

“Lot 2 in block 8 of Brentwood Park, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in book 9, page 10 of Maps, in the office of the county recorder of said county.

“Also that portion of Avondale Avenue and Hanover Street, vacated by Ordinance No. 41346 (New Series of said City), adjoining said lot 2 on the northwest, [14] bounded on the north by the southerly line of said Hanover Street, as now established, 75 feet wide, and on the west by the easterly line of said Avondale Avenue, as now established, 75 feet wide.

“Commonly known as 306 Avondale Avenue, Los Angeles, California.”

The first Declaration of Homestead (Exhibit 3) which was abandoned gave the same description, excepting the street address.

These facts state a situation which is without precedent in the reported cases. The statute, Section 1263, California Civil Code, makes mandatory that the declaration of homestead must contain, among other requirements:

“3. A description of the premises.”

The case of *Donnelly v. Tregaskis*, 154 Cal. 261, is helpful in our present situation. The Court said therein, at page 263:

“* * * A description of the premises necessarily means such description as will serve to identify the property. To uphold homesteads, which are favored by the law, great liberality in this respect will be allowed, but the rule nevertheless obtains in full force, that the description must be sufficient so that the property may be identified in some legitimate manner * * *”

Again, on page 264:

“* * * We do mean, however, to declare the unquestioned rule that where a [15] description is dependent for its sufficiency upon some other instrument, such as a map, the map, properly identified, must be produced, or in some manner established, or the description must fail. * * *”

See also *In re Ogburn*,
105 Cal. 95.

In construing the declaration of homestead in this case, I am required to consider the whole document and all that is contained within its four corners.

Paragraph (6) of the declaration, which refers to the abandonment of a prior declaration, falls under the permissive, as distinguished from the mandatory provisions of Section 1263, Civil Code. It is comparable to a recital in a deed, which may be referred to give certainty to an instrument. The recording of a homestead is for the purpose of giving notice of the declarant's claim. A person searching the records of the County Recorder's Office would find the declaration of May 21, 1954. He would not find a description of the property in that document. He would find a reference to an abandonment of homestead "on or about March 12, 1954." Then through the proper index he would find the abandonment. The abandonment would give him a complete description of the property. And then if he went out to examine the property he would have found the bankrupt and his family living on the property, and that there was a six-room house and a garage on the premises.

The courts of California have held that the homestead statutes, being of a remedial and humane character, should be given a liberal construction.

Schuyler v. Broughton,

76 Cal. 524;

Southwick v. Davis,

78 Cal. 504.

However, the mode in which a homestead is to be created, as [16] well as the legal incidents which attach to its existence, are purely statutory.

Security Loan & Trust Co. v. Kauffman,
108 Cal. 214, at 219.

The mandatory provisions of the statute must be substantially complied with to make valid a declaration of homestead.

Ashley v. Olmstead,
54 Cal. 616.

This case is not so concerned with strict or liberal construction of the statute as with the factual question of whether or not the instrument sufficiently describes the property claimed as a homestead to meet the intent and purpose of the statute.

I reach the conclusion that the reference in the declaration to the previously recorded document is sufficient to supply a valid description under the statute. It is sufficient to give notice of the claim and that is the purpose for the recording of the instrument.

Counsel for the objecting bankrupt shall prepare, serve and file proposed findings, conclusions and order in conformity with this opinion. Local Rule 7 (a).

Dated: November 30, 1956.

/s/ DAVID B. HEAD,
Referee in Bankruptcy.

[Endorsed]: Filed Nov. 30, 1956. [17]

In the District Court of the United States for the
Southern District of California, Central Division

No. 73,351-TC

In the Matter of:

CECIL M. JACKSON,

Bankrupt.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER RE HOMESTEAD EX-
EMPTION

At Los Angeles in Said District on the 8th Day of
December, 1956:

This matter came on to be heard before the under-
signed Referee in Bankruptcy on October 2, 1956,
in his Courtroom, Room 340, Federal Building, Los
Angeles, California, upon the bankrupt's objections
to the Trustee's determination of exempt property.

A. S. Menick, Trustee in Bankruptcy, appeared
by and through his Attorneys, Craig, Weller &
Laugharn, by C. E. H. McDonnell. The bankrupt
appeared by and through his Attorneys, Irving
Sulmeyer and Martin J. Kirwan.

The Court having heard the statements of counsel
and their citation of authority, and having taken the
matter under submission, and being fully advised in
the premises, does hereby make its Findings of Fact,
Conclusions of Law, and Judgment as follows:

Findings of Fact

1. On May 21, 1954, Bankrupt and his wife duly recorded [18] a Declaration of Homestead (Exhibit 1). That on said May 21, 1954, the bankrupt was living with his family on the property claimed as exempt.

2. The Homestead Declaration (Exhibit 1) states as follows:

“ * * *

(3) They are now residing on the land and premises located in the City of Los Angeles, County of Los Angeles, State of California, and more particularly described as follows:

[No description of the premises is set out.]

* * *

(6) No former declaration of homestead has been made by them, or by either of them, except as follows:

The former declaration of homestead was abandoned on or about March 12, 1954.

(7) The character of said property so sought to be homesteaded, and the improvement or improvements which have been affixed thereto, are as follows: six-room residence and garage.

* * *”

3. That on March 12, 1954, the bankrupt and his wife filed an abandonment of homestead (Ex-

hibit 2), which described the property on which the homestead was abandoned as follows:

“Lot 2 in block 8 of Brentwood Park, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in book 9, page 10 of [19] Maps, in the office of the County Recorder of said county.

“Also that portion of Avondale Avenue and Hanover Street, vacated by Ordinance No. 41346 (New Series of said City), adjoining said Lot 2 on the northwest, bounded on the north by the southerly line of said Hanover Street, as now established, 75 feet wide, and on the west by the easterly line of said Avondale Avenue, as now established, 75 feet wide.

“Commonly known as 306 Avondale Avenue, Los Angeles, California.”

4. The first Declaration of Homestead (Exhibit 3) which was abandoned gave the same description, excepting the street address, as was shown in the Abandonment of Homestead.

5. That from and after May 21, 1954, bankrupt and his family were living on the property claimed as exempt herein, and that said property contains thereon a six-room house and a garage.

Conclusions of Law

That the Declaration of Homestead recorded by the bankrupt and his wife on May 21, 1954, contains a sufficient and valid description of the real property

claimed as exempt, under the provisions of the California Homestead Statutes.

The Declaration of Homestead recorded by the bankrupt and his wife on May 21, 1954, is valid as against the Trustee in Bankruptcy.

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is

Ordered, Adjudged, and Decreed that the objections of bankrupt to the Trustee's determination of exempt property is [20] sustained and it is

Further Ordered, Adjudged, and Decreed that the real property described as

Lot 2 in block 8 of Brentwood Park in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in book 9, page 10 of Maps, in the office of the County Recorder of said county.

Also that portion of Avondale Avenue and Hanover Street, vacated by Ordinance No. 41346 (New Series of said City), adjoining said Lot 2 on the northwest, bounded on the north by the southerly line of said Hanover Street, as now established, 75 feet wide, and on the west by the easterly line of said Avondale Avenue, as now established, 75 feet wide, which real property is commonly known as 306 Avondale Avenue, Los Angeles, California,

be and the same is hereby designated and set apart to be retained by the bankrupt as his own property,

under the provisions of the Act of Congress relating to bankruptcy, as his exemption duly allowed by law and claimed by him in the above-entitled proceedings.

/s/ DAVID B. HEAD,
Referee in Bankruptcy.

Affidavit of service by mail attached.

[Endorsed]: Filed January 8, 1957. [21]

[Title of District Court and Cause.]

PETITION FOR REVIEW

To the Honorable David B. Head, Referee in Bankruptcy:

The petition of A. S. Menick, the duly elected, qualified and acting trustee in the within bankruptcy proceedings respectfully shows:

I.

That on the 8th day of January, 1957 your Honor made and entered Findings of Fact, Conclusions of Law and order denying the report of exempt property of the trustee, sustaining the objections thereto filed by the bankrupt and setting aside to the bankrupt as exempt certain real property as is more particularly set forth in the said Findings of Fact, Conclusions of Law and Order, which is attached hereto, marked Exhibit A and made a part hereof.

II.

The trustee respectfully contends that the Findings of Fact are erroneous and not supported by the evidence in the following particulars: The said Findings in paragraph 1 recites that on May 21, 1954, the bankrupt and his wife duly recorded a [23] declaration of homestead. That on May 21, 1954, the bankrupt was living with his family on the property claimed as exempt. The trustee contends that the said declaration of homestead referred to as Exhibit 1 in the said proceedings was not a valid, legal or sufficient instrument to qualify as a declaration of homestead in that the same as made, executed and recorded contained no legal description or address whatsoever of the said premises purportedly claimed as exempt. The trustee also contends that the Conclusions of Law were erroneous and improperly made upon the said evidence when the same concluded that the said declaration of homestead recorded by the bankrupt and his wife on May 21, 1954, contained a sufficient and valid description of the real property claimed as exempt under the provisions of the California Homestead Statutes in that there was absolutely no description set forth therein in the said declaration of homestead as executed and as recorded, and accordingly the further conclusion that the said declaration of homestead is valid as against the trustee is erroneous.

Trustee likewise contends that the order made by the Referee on January 8, 1957, which decreed

that the objections of the bankrupt to the trustee's determination of exempt property (the trustee refused to set the said property aside as exempt) was sustained and determining that the real property as described in the said order was designated and set apart to be retained by the bankrupt as his own property and as his exemption was erroneous in that the bankrupt had no declaration of homestead recorded which complied with the provisions of Section 1263 of the Civil Code of the State of California.

Your trustee contends that the said purported declaration of homestead, devoid of any description of the said premises other than a recitation that the same is a six-room residence and garage, and the further statement that no former declaration of homestead had been made except that the former declaration of homestead was [24] abandoned on or about March 12, 1954, does not provide in any manner sufficient description of the said premises to comply with the said Section and/or constitute the said document a valid declaration of homestead.

Wherefore, your petitioner prays that your Honor certify to the Judge of this court and transmit to the Clerk the record in the within proceedings, including the trustee's report of exempt property, the objections thereto, the Findings of Fact, Conclusions of Law and Order of January 8, 1957, the exhibits received by the Referee in connection with the said hearing, and any other papers or documents pertinent thereto; and your trustee further prays

that the said order of January 8, 1957, be set aside and that the trustee be directed to proceed with the administration of the said real property.

/s/ A. S. MENICK,
Trustee in Bankruptcy.

CRAIG, WELLER & LAUGH-
HARN,

By /s/ C. E. H. McDONNELL,
Attorneys for Trustee.

Affidavit of service by mail attached.

Duly verified.

[Endorsed]: Filed January 18, 1957. [25]

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF TRUSTEE'S PETITION FOR REVIEW

To the Honorable Thurmond Clarke, Judge of the United States District Court, Southern District of California:

A. S. Menick, the trustee herein, has filed his Petition for Review of a certain Order made by Referee David B. Head in the within proceedings on January 8, 1957, which set aside to the bankrupt certain real property as exempt and in support

thereof the within Memorandum of Points and Authorities is filed herewith.

Facts:

The facts are simple and uncontested:

The bankrupt seeks to have set aside as exempt to him a homestead. The Findings of Fact refer to the Declaration of Homestead as follows (Exhibit 1):

“(3) They are now residing on the land and premises located in the City of Los Angeles, County of Los Angeles, State of California, and more particularly described as follows:

“(No description of the premises is set out.)

“* * *

“(6) No former declaration of homestead has been [27] made by them, or by either of them, except as follows: the former declaration of homestead was abandoned on or about March 12, 1954.

“(7) The character of said property so sought to be homesteaded, and the improvement or improvements which have been affixed thereto, are as follows: six-room residence and garage.”

The sole issue is:

Is the Declaration of Homestead sufficient, complete and adequate and does the same meet the requirements of the statute?

The Statute—California Civil Code Section 1263 sets forth the “Formal Requirements” of the Declaration. The present controversy concerns “3. A description of the premises.”

It has been our experience that when a question as to the debtor’s or bankrupt’s imperfect right of exemption arises, the “liberality of construction” is always asserted by the person so claiming the exemption to bridge over or explain the imperfect or legally insufficient exemption. And, in this particular case the Referee in his Memorandum Opinion stated that: “The Courts of California have held that the homestead statutes, being of a remedial and humane character, should be given a liberal construction.”

It is of extreme interest to see just how far this so-called “liberal and humane” doctrine can be stretched. Take, for example, the case of *E. A. Lynch, trustee, vs. Robert L. Stotler*, 215 F. 2d 776. This is the most recent decision of the United States Court of Appeals, Ninth Circuit, on this point, the decision having been rendered on September 27, 1954. In this case in which we represented the trustee, the United States District Judge applied this liberality rule and held that [28] (4) of the “Formal Requirements” of Section 1262 of the Civil Code, i.e., “An estimate of the actual cash value” was met by leaving the answer blank. The decision of the District Judge was reversed.

From the decision at page 778:

“Both parties cite many California homestead cases. Many of these cases tend toward a liberal construction of the California exemption statutes.

“Although homestead exemptions are a creature of statute and not of common law, we are bound to and we do accept the idea that the statute should not be too strictly construed. But where the homestead requires as a condition of its existence the performing of certain acts and some of them have not been performed, we find no California case that would justify us in reading statutory requirements out of the statute. As we have construed the declaration, the bankrupts did little more than say in writing, ‘We want a homestead.’

“We think we are compelled to deny the homestead on the basis of the underlying reasoning of the following California cases: *Rich v. Ervin*, 86 Cal. App. 2d 386, 194 P. 2d 80; *Crenshaw v. Smith*, 74 Cal. App. 2d 255, 168 P. 2d 752; *Schuler-Know Co. v. Smith*, 62 Cal. App. 2d 86, 144 P. 2d 47; *Reid v. Englehart-Davidson Co.*, 126 Cal. 527, 58 P. 1063; *Ames v. Eldred*, 55 Cal. 136; *Ashley v. Olmstead*, 54 Cal. 616.”

The California Courts have likewise held the debtor to a strict construction of the statute with respect to the necessary and so-called “formal requirements.” Failure to state an estimate of the cash value—Homestead void, *Ashley [29] v. Olmstead*, 54 Cal. 616.

Homestead not valid where phrase in Declaration states "does not exceed in value the sum of five thousand dollars." *Southwick vs. Davis*, 78 Cal. 504.

Ignoring the seemingly unimportant point of the "Formal Requirements" of the said Section i.e., "1. The name of the wife," renders the Homestead ineffective and void. *In re Mapes*, 120 F. Supp. 316. This is a 1954 decision of Judge Tolin of this Court affirming the Order of the Referee. From the decision at page 317:

"State exemption statutes generally receive '* * * the most liberal construction which the courts can possibly give them.' * * *

"Of equal dignity with this rule is the sequela that the District Court is bound to accept the State law as it has been declared by the California courts. *Erie R. Co. v. Tompkins*, 1938, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188.

"In construing a preceding, and very similar, section of the Code, the California Supreme Court said (in 1880) that provisions prescribing what shall be contained in a declaration of homestead are mandatory and not merely directive, and that compliance with them is essential to the validity of the homestead. The Court indicated that although such statutes might be generally subject to a liberal construction, the language 'must contain' is plain and requires no construction. *Ashley v. Olmstead*, 54 Cal. 616."——

A wife's Declaration which does not contain a statement that the husband has not made a Declaration is void. *Strangman v. [30] Duke*, 140 CA 2d 185, February 17, 1956.

Description of Premises

This particular segment of the "Formal Requirements" "(3) The description of the premises," is the heart of the Section. Without it there is no selection.

The nearest approach to a support to the bankrupt's contention that he need not set forth a complete description is the case of *Donnelly v. Tregaskis*, 154 Cal. 261. From the opinion at page 263:

"The declaration of homestead made by the wife set forth that she resided with her family 'on the lot of land and premises situate, lying and being in the city of Vallejo, County of Solano, State of California, bounded and described as follows, to wit: Being lot No. 14 in block No. 266, according to the map of said Vallejo made by C. W. Rowe, surveyor.' A description of the premises necessarily means such description as will serve to identify the property. To uphold homesteads, which are favored by the law, great liberality in this respect will be allowed, but the rule nevertheless obtains in full force, that the description must be sufficient so that the property may be identified in some legitimate manner."

In this case we find at least an effort at description and location.

The most "liberal" case which has come to our attention is the recent case of *Oktanski v. Burn*, 138 CA 2d 419, January 11, 1956. In this case the street address was inserted and the Court held that if the street address was correctly given in the Declaration that the requirement of the [31] Section was met.

In the case of *Jones v. Gunn*, 149 Cal. 687 (cited in the above *Donnelly* case), we find a deficient claim of Homestead exemption wherein the claim was as to "all lands owned by her husband in the township."

From the opinion at page 689:

"These requirements must all appear upon the fact of the declaration, and the omission of any one of them from the declaration is fatal to the claim of homestead, and cannot be supplied by extraneous evidence. (*Read v. Englehart-Davidson, etc., Co.*, 126 Cal. 529 (77 Am. St. Rep. 206, 58 Pac. 1063).)

"Section 1263 C. C. by separate subdivision, provides that the declaration must contain a description of the premises, and this provision would seem to be as mandatory as any of the other provisions of said section."

In that case, as here, the contention was made that by consulting other records the description could be supplied.

The mere fact that the debtor did not set forth in his Declaration that he was living on the prem-

ises, makes the Declaration imperfect and void. *Olds v. Thorington*, 47 Cal. App. 355. From the decision at page 359:

“It will be observed that the declarant declares that he resides on the northwest quarter of Section 28, which, according to the description immediately following in the homestead, consists of three distinct parcels of land, two of which the declarant does not own. He fails to specify, however, on which of those three parcels he was then residing. In other words, it cannot be determined from the declaration whether the declarant was then [32] residing on the thirty-two-foot strip on the east side of the quarter section, or on the thirty-one-rod strip, on the west side of said quarter section, or on the mid parcel which he afterward attempts to select as a homestead. We are of the opinion that such omission is fatal. If the statement of residence, or any of the other statements required to be made by said section, is omitted the homestead is void. Indeed, the supreme court of this state has generally held that homestead claimants must quite strictly comply with the statutory requirements.

“And in *Tappendorff v. Moranda*, 134 Cal. 419 (66 Pac. 419): ‘The right to a homestead and to enjoy the privileges and immunities incident thereto is purely of statutory creation, and exists only upon a compliance with the requirements of the statute. What the statute has specifically prescribed as a requisite for impressing the incidents of a home-

stead upon a tract of land is mandatory and cannot be dispensed with.'

"In *Boreham v. Byrne*, 83 Cal. 23 (23 Pac. 212), it was held that where the declarant stated that he was 'in possession' of certain described premises which he claimed as a homestead it was not the equivalent of the required statement of residence.

"The case of *Harris v. Duarte*, 141 Cal. 497 (70 Pac. 298, 75 Pac. 58), was one in which it was shown that a parcel of land on which the declarant resided was not the one described in the declaration, and the court held the error to be fatal, saying: 'A declaration of homestead must contain a description of the premises claimed and a statement that the person making it is residing on the premises [33] described.'

"Respondent further contends for the application of the rule that ambiguity or obscurity in a written instrument may be removed by extrinsic evidence, from which he argues that since the evidence shows that the dwelling was located on the mid parcel the defect in the declaration is cured. The established rule is, however, that the right of a claimant to select a homestead and impress upon it an exemption from forced sale must appear upon the face of the declaration, and its omission cannot be supplied by extraneous evidence. (*Read v. Englehart-Davidson Co.*, *supra*; *Boreham v. Byrne*, *supra*.)"

An example of liberality with which we agree is the old case of *Ornbaum v. His Creditors*, 61 Cal.

455 in which case the Declaration has a description as follows:

“Plaintiff filed and had recorded his declaration of homestead in the County of Mendocino; that the homestead was bounded as follows: On the north by Ranchera Creek; on the east by the ranches of Robert Stubblefield and Paddy Adams; on the south by what is known as Redwood Mountains, and on the west by Camp Creek. That said boundary embraced about eleven hundred acres. That at the time said declaration was filed the lands were Government lands of the United States.”

And the Court held that the description was adequate.

In none of the cases involving these situations:

1. Failure to give name of wife;
2. Failure to show residence on property;
3. Failure to show value;
4. Failure to give description; [34]
5. Failure of wife to state that husband had made no Declaration;

was extrinsic evidence allowed.

This rule is obvious and if such extrinsic evidence allowed, a mockery would be made of the requirements of the Section and all that the bankrupt would have to do would be to say, “I have recorded a Declaration of Homestead which recites, ‘I claim a homestead,’ ” and then to prove and establish the same at a later date with further and additional evi-

dence in an attempt to provide the fatal deficiencies.

As between adjoining owners, grantor and grantee, leases and conveyances, we concede that matters of intent and imperfect descriptions by reference to maps and other extrinsic evidence can be later supplied. But, most certainly, this is not the rule with respect to statutory Declarations of Homestead.

Carey vs. Douthitt, 140 Cal. App. 409: "The sufficiency of a Declaration of Homestead must be determined from the statements expressly made therein and cannot be affected by any secret intentions which may have been in the mind of the claimant."

The Declaration of Homestead in the instant case as we have said hereinabove, gave no answer whatsoever under "3 Description of premises." However, under item "6. No former Declaration of Homestead has been made by them, or by either of them, except as follows," and the following was inserted:

"The former declaration of homestead was abandoned on or about March 12, 1954."
(Italics added.)

Just what does this answer mean? A person can only have one homestead at a time. If the bankrupt has a homestead on other property, he cannot claim a homestead on the second property. [35] That is the purpose of the question and the necessity for its answer. What former Declaration of Homestead was abandoned? In what city or county? Where was

the Declaration recorded? Was it on the same property? The instrument itself does not state these facts.

Even if the former abandonment of homestead was inspected and a description ascertained, there would be no assurance that it referred to the same property. The said phrase, "The former Declaration of Homestead, etc.," does not state that it concerned the same property.

The answer is plain surplusage. It adds nothing. The answer (if a prior homestead had been abandoned—by sale or actual abandonment—then the necessary answer) would be "no" or "none."

The bankrupt, and we must admit with success, argued before the Referee that he intended to indicate that the Declaration on this very property was abandoned and the bankrupt contended that if a person was interested in so doing, he could search the records and find the said abandonment recorded and further could search the records and find the former Declaration and then secure the description therein contained; then supply it to the deficient document and thus perfect the same.

The use of such extrinsic evidence is not permissible. It is not permitted by the California decisions referred to hereinabove.

Thus we arrive at the conclusion that the Declaration does not comply with the Statute and is deficient.

It is respectfully submitted that the decision of the Referee, in the light of the decisions of this Court, the decisions of the United States Court of Appeals for the Ninth Circuit and the decisions of the California State Courts, should be reversed. [36]

CRAIG, WELLER &
LAUGHARN,

By /s/ HUBERT F. LAUGHARN,
Attorneys for A. S. Menick,
Trustee.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Feb. 20, 1957. [37]

[Title of District Court and Cause.]

POINTS AND AUTHORITIES OF BANK-
RUPT IN REPLY TO TRUSTEE'S
AUTHORITIES FOR PETITION FOR
REVIEW

To the Honorable Thurmond Clarke, Judge of the United States District Court, Southern District of California.

The bankrupt herein, by and through his attorneys of record, Irving Sulmeyer and Eugene S. Ives, respectfully submits the following reply memorandum of points and authorities to the memorandum of points and authorities submitted by the Trustee herein, A. S. Menick.

Facts

The facts in this case are clearly and simply set forth in the memorandum of the Referee re objections to Trustee's report of exempt property. Those facts are adopted herein without repeating them at length.

The basic question in this case is whether the bankrupt substantially complied with the California homestead statute, Civil Code of California 1263, when he recorded that certain Declaration of Homestead on May 21st, 1954. We are here only concerned with the third requirement set forth in that code section which requirement [39] states that a description of the premises must be given. The homestead declaration (Exhibit 1) as indicated in the Referee's opinion fully met the other requirements of the statute. The only question remaining is whether the reference in that document to a previously recorded Abandonment of Homestead recorded on a specific date would supply the missing description.

I.

A Review of the Points and Authorities Filed by Trustee Fails to Indicate Any California Case Stating that a Precise Description of the Property is a Mandatory Requirement of the California Homestead Law.

A careful examination of the cases cited in the points and authorities filed by the Trustee herein reveals no case in which any California court has

said that the Homestead Statute will be strictly construed as to the description of the property sought to be homesteaded. To put it another way an examination of all the cases cited by the Trustee in his points and authorities reveal that the courts of California have said that the Homestead Statute will be strictly construed as regards the following:

1. Statement of the declarant as to his married status. (*Rich v. Ervin*, 86 Cal. App. (2d) 386, 194 Pac. (2d) 80; *Reid v. Engelhardt-Davidson Co.*, 126 Cal. 527, 58 Pac. 1063.)

2. Failure to give estimate as to actual cash value. (*Lynch v. Stotler*, 215 F. (2d) 776; *Ames v. Eldred*, 55 Cal. 136; *Ashley v. Olmstead*, 54 Cal. 616.)

3. Failure to indicate a homestead had or had not been previously selected. (*Crenshaw v. Smith*, 74 Cal. App. (2d) 255, 168 Pac. (2d) 752; *Schuler-Know Co. v. Smith*, 62 Cal. App. (2d) 86, 144 Pac. (2d) 47.)

II.

The Description of the Property Sought to Be Homesteaded in a Homestead Declaration Need Be No More Specific [40] Than in a Deed.

The memorandum of points and authorities of the Trustee reviews the cases covering the requirements of the California Homestead Statute which state that certain of the requirements in this statute are mandatory. However, the basic and elemental rule of the California law that the description of

the property in a Homestead Declaration need be no more particularly described than in a conveyance has been either disregarded or overlooked in said memorandum.

In the case of *Ornbaum v. His Creditors*, 61 Cal. 455, the court declared that a more particular description of land in a Declaration of Homestead is not required than is required in a deed of conveyance. That rule was again enunciated with approval in the case of *Jones v. Gunn*, 149 Cal. 687 at page 690.

Thus while there are requirements in the Homestead Act that must be strictly construed the courts of California and the Federal courts for the Ninth Circuit, which must follow the California rules, have allowed great liberality in determining the description of the premises sought to be homesteaded.

III.

The Purpose and Nature of the Homestead Legislation Requires That a Court Reviewing or Passing on the Legal Sufficiency of a Homestead Should Give Liberal Construction to Their Interpretation That Their Purposes May Be Carried Out to the Benefit of the Party or Parties Claiming the Homestead.

Homestead laws are predicated on public policy, their purpose being to promote a healthy social order and to prevent insolvent persons from becoming homeless.

Schmidt v. Denning,
117 Cal. App. 36;

Phelps v. Loop,
64 Cal. App. (2d) 332;

Rich v. Ervin,
86 Cal. App. (2d) 386.

The homestead laws are intended for the benefit of the [41] debtor rather than the creditor.

Simonon v. Burr,
121 Cal. 582.

The homestead laws are given a liberal construction in order to advance their beneficial objects and carry out the manifest purpose of the Legislature.

Greenlee v. Greenlee,
7 Cal. (2d) 579;

Johnson v. Brauner,
131 Cal. App. (2d) 713;

Oktanski v. Burn,
138 Cal. App. (2d) 419.

Contrary to the excerpts cited by the Trustee in his memorandum of points and authorities, page 2, line 27, through line 27, page 3, California courts have endeavored to give full effect, if at all possible to the benefits of the Homestead Declaration. Further the cases cited in the points and authorities of the Trustee are, as pointed out above, only dealing with the requirements other than the description of the premises in the Declaration of Homestead.

IV.

The Entire Document Here Under Consideration
Must Be Examined to Determine Its Legal
Sufficiency.

The document here considered contains a statement that Cecil M. Jackson, his wife and two children are residing on the land and premises located in the City of Los Angeles, County of Los Angeles, State of California, which they claim as a homestead, and further the value of this property sought to be homesteaded is set forth as being \$27,000. This document then contains a reference to "the" former declaration of homestead abandoned on or about March 12, 1954. An additional paragraph furnishes the information that the homestead property contains a six-room residence and garage.

In determining the legal sufficiency of this document we must examine it in its entirety to determine if it refers anywhere to another document which will furnish additional information to complete the legal description.

Ritchie v. Anchor Casualty Co., 135 Cal. App. (2d) 245, 251. [42]

Paragraph six does refer to an Abandonment of Homestead carried out on a specific date. It is submitted that if the Abandonment of Homestead of March 12, 1954, contains an adequate description the document here considered is legally sufficient.

V.

The Reference in the Document Here Under Consideration to the Abandonment of Homestead Recorded on a Specific Date Is a Reference Sufficiently Certain to Identify a Document Containing a Full Description of the Property, and Thus Cure Any Defect in the Document.

As indicated in section II above the description in a homestead declaration need not be more particular than in a conveyance.

In the case of Matter of the Estate of Caroline Ogburn, 105 Cal. 95, the description of the property sought to be homesteaded was as follows:

“Western part of lot No. 5 of said village as laid out by F. S. Freeman’s Division of said village, the same being 37 feet front on Main Street of said village, and extending back with parallel lines one hundred and ninety feet deep, it being a part of the southeast $\frac{1}{4}$ of section 21, in Township No. 10 of range 2 east.”

It was contended by the appellants that this description was void as there was nothing to show the location of lot 5. The court held that the Declaration of Homestead stated that the family resided upon the lot sought to be homesteaded, and this statement, together with such description which followed clearly enough designated the premises intended to be claimed as a homestead.

The above case is cited with approval in the case of *Donnelly v. Tregaskis*, 154 Cal. 261, at page 263, where the court stated: [43]

“In this discussion we do not mean to be understood as holding that to make a sufficient description a deed must refer to a map actually of record. We do mean, however, to declare the unquestioned rule that where a description is dependent for its sufficiency upon some instrument, such as a map, the map, properly identified, must be produced, or in some manner established, or the description must fail.”

The Trustee in his points and authorities has raised the question as to the determination whether the property sought to be homesteaded was in Los Angeles County or City or elsewhere, whether it was the same property and where the declaration was recorded. As indicated above this question is in a large part answered if the entire document is considered. It clearly shows that the property is in the City of Los Angeles and the County of Los Angeles, State of California, its value is given and it is described as a six-room residence and garage. In paragraph 6 the statement is made, “The former declaration of homestead was abandoned on or about March 12th, 1954.” Taking all the facts that are set forth on this document together it becomes manifest that they are all referring to the same piece of property and that the reference is with the certainty that has been referred to in the cases above cited. It is interesting to note in the case of *Oktan-ski v. Burn*, 138 Cal. App. (2d) 419, 291 Pac. (2d) 954 at 138 Cal. App. (2d) 421, the court pointed out that although the description of the property

created a manifest ambiguity so that two separate descriptions of two different properties existed that such a description was not defective. The court in that case determined the Declaration of Homestead was adequate. Certainly the same argument could have been made in that case as to the inability to determine where the property was located as in the present one. However, the rule set forth by the court in that case that homestead laws should be given their [44] most liberal construction in order to advance their beneficial objects and carry out the manifest purposes of the Legislature should be followed in the present one to support the Referee's decision.

Summary

The reference in the Declaration of Homestead here under consideration to a previously recorded Abandonment of Homestead recorded on a specific date is such an adequate reference as to supply the description, thus the Homestead Declaration recorded on May 21st, 1954, substantially complied with the requirements of the Homestead statute of the State of California.

It is respectfully submitted that a careful examination of the California cases and the decisions of the United States Court of Appeals from the Ninth Circuit will reveal no case that conflicts with the decision of the Referee in this matter and that this Honorable Court should affirm the decision of the Referee in its entirety.

Respectfully submitted,

IRVING SULMEYER and
EUGENE S. IVES,

By /s/ EUGENE S. IVES,
Attorneys for Bankrupt.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Feb. 21, 1957. [45]

United State District Court, Southern District of
California, Central Division
In Bankruptcy No. 73,351-TC

In the Matter of:

CECIL M. JACKSON,

Bankrupt.

ORDER GRANTING PETITION FOR RE-
VIEW, SETTING ASIDE REFEREE'S
ORDER OF JANUARY 8, 1957, AND DE-
TERMINING THAT BANKRUPT DOES
NOT HAVE VALID CLAIM OF HOME-
STEAD EXEMPTION

A. S. Menick, the trustee in the above-entitled bankruptcy estate, having filed his Petition for Review of a certain Order made by Referee David B. Head in the within bankruptcy proceeding on January 8, 1957, which set aside to the bankrupt certain real property as exempt, and the said Petition coming on for hearing before the Court and having been continued from time to time and having been heard on October 14, 1957, at the hour of 10:00 a.m. thereof, and

The trustee being represented by Craig, Weller & Laugharn by Hubert F. Laugharn, as his attorneys, and the bankrupt being represented by Irving Sulmeyer and Eugene S. Ives and Memorandums of Points and Authorities having been filed by the respective parties pursuant to Bankruptcy Rule 204 of this Court, and

The Court having determined that the Petition for Review should be granted and the Order of January 8, 1957, setting aside the said real property as exempt should be set aside and reversed,

Now, Therefore, lieu of the Findings of the Referee, [47] the Court makes and adopts the following Finding, to wit:

The Declaration of Homestead recorded by the bankrupt and his wife on May 21, 1954, did not comply with the provisions of Section 1263 of the Civil Code of the State of California in that it did not set forth a description of the real property claimed as exempt.

The Court concludes as a matter of law that the Declaration of Homestead was a nullity and the bankrupt is not entitled to a claim of exemption by virtue thereof.

Now, Therefore,

It Is Ordered that the Order of the Referee, dated January 18, 1957, be, and the same hereby is, set aside and reversed.

Dated: October 18, 1957.

/s/ THURMOND CLARKE,
United States District Judge.

Affidavit of Service by Mail attached.

[Endorsed]: Filed and entered Oct. 18, [48]
1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO COURT OF
APPEALS UNDER RULE 73 (b)

Notice Is Hereby Given that Cecil M. Jackson, Bankrupt, in the above matter, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order Granting Petition for Review, Setting Aside Referee's Order of January 8, 1957, and Determining That Bankrupt Does Not Have Valid Claim of Homestead Exemption, entered in this action on October 18, 1957.

IRVING SULMEYER &
EUGENE S. IVES,

By /s/ EUGENE S. IVES,
Attorneys for Cecil M.
Jackson, Bankrupt.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Nov. 15, 1957. [50]

[Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

A. The foregoing pages, numbered 1 to 54, inclusive, containing the original:

(Certified copy.) Schedule B-5, Page 15 of Bankrupt's Petition.

Trustee's Report of Exempt Property.

Bankrupt's Objections to Trustee's Determination of Exempt Property.

Points and Authorities in Support of Bankrupt's Objections to Trustee's Determination of Exempt Property Memorandum by Referee re Objections to Trustee's Report of Exempt Property.

Findings of Fact, Conclusions of Law and Order re Homestead Exemption.

Petition for Review.

Memorandum of Points and Authorities in Support of Trustee's Petition for Review.

Points and Authorities of Bankrupt in Reply to Trustee's Authorities for Petition for Review.

Order Granting Petition for Review, setting aside Referee's Order of January 8, 1957, and

Determining That Bankrupt Does Not Have Valid Claim of Homestead Exemption.

Notice of Appeal.

Request for Preparation of Clerk's Transcript on Appeal.

B. Bankrupt's Exhibits 1, 2 and 3.

I further certify that my fee for preparing the foregoing record, amounting to \$1.60 has been paid by appellant.

Dated: December 9, 1957.

[Seal] JOHN A. CHILDRESS,
Clerk;

By /s/ WM. A. WHITE,
Deputy Clerk.

[Endorsed]: No. 15826. United States Court of Appeals for the Ninth Circuit. Cecil M. Jackson, Bankrupt, Appellant, vs. A. S. Menick, Trustee in Bankruptcy of Cecil M. Jackson, Bankrupt, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed December 11, 1957.

Docketed December 23, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 15826

In the Matter of:

CECIL M. JACKSON,

Bankrupt and Appellant,

vs.

A. S. MENICK,

Appellee.

STATEMENT OF POINTS
ON APPEAL

The points upon which Appellant will rely on appeal are:

(1) That the Court erred in granting the petition for review setting aside the Referee in Bankruptcy's Order of January 8th, 1957, and determining that the bankrupt did not have a valid claim of homestead exemption.

(2) That the Court erred in finding that the declaration of homestead recorded by the bankrupt and his wife on May 21st, 1954, did not comply with the provisions of Section 1263 of the Civil Code of the State of California.

(3) That the Court erred in finding that the declaration of homestead recorded by the bankrupt and his wife on May 21st, 1954, did not set forth

an adequate description of the real property claimed as exemption.

(4) That the Court erred in finding that the declaration of homestead recorded by the bankrupt and his wife on May 21st, 1954, did not contain a sufficient reference to a previously recorded document containing a full and complete description of the property homesteaded.

(5) That the Court erred in concluding as a matter of law that the declaration of homestead was a nullity and the bankrupt was not entitled to a claim of exemption by reason of the homestead recorded on May 21st, 1954.

(6) That the Court erred in concluding as a matter of law that the declaration of homestead recorded by the bankrupt and his wife on May 21st, 1954, did not contain within its four corners sufficient data including a reference to a previous recorded document to comply with the provisions of Section 1263 of the Civil Code of the State of California.

Respectfully submitted,

IRVING SULMEYER &
EUGENE S. IVES,

By /s/ MARTIN J. KIRNAN,
Attorneys for the Bankrupt
and Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Dec. 24, 1957.